

General Information Letter: Taxpayer apportioning all income to commercial domicile state.

February 11, 1998

Dear:

This is in response to your letter dated January 21, 1998. Illinois Department of Revenue (the "Department") rules require that the Department issue two types of letter rulings, private letter rulings ("PLR") and general information letters ("GIL"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax law and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the nature of your questions and the information you provided require that we respond with a GIL.

In your letter you have stated the following:

We have received the 1997 Il-1120 Illinois Corporation Income Tax Return forms manual. xxxxxxxxxxxx (trademark) xxxxx xxxxxxxx is incorporated and located in the state of Minnesota. Corporate income tax on all xxxxxx is paid in the state of Minnesota. If there is any question, please call me direct at xxx-xxx-xxxx.

Our Illinois Sales tax registration no: IBT xxxx-xxxx

The tenor of your letter suggests that you have doubts regarding whether your company, which appears to be a manufacturing company, has enough business activities (nexus) with the State of Illinois (the "State") to be subject to the State's income tax.

Please be advised that the question of whether your company has the requisite nexus with the State to be subject to taxation by the State is an extremely fact-specific determination. Therefore, we cannot issue a ruling on the issue of whether a particular taxpayer has nexus with the State. Such a determination may only be made in the context of an audit where the Department's auditors would have access to all relevant facts and circumstances.

In general, a corporation is considered to have nexus in Illinois if any of its business or nonbusiness income is apportionable or allocable to Illinois under the Illinois Income Tax Act ("IITA"), Sections 301 to 304 (copy enclosed). Under IITA, Section 201(a), a tax measured by net income is imposed on every corporation for the privilege of earning or receiving income in Illinois. As a manufacturing company, xxxxxxxxxxxx would apportion its business income to Illinois as prescribed in IITA, Section 304(a).

Business income is defined in IITA, Section 1501(a)(1), as "income arising from transactions and activity in the regular course of the taxpayer's trade or business, net of the deductions allocable thereto, and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations." The term business income does not include compensation or the deduction allocable thereto. Nonbusiness income is any income that is not business income. IITA, Section 1501(a)((13).

You should be aware that if a corporation is required to file a federal income tax return and such corporation is authorized to do business in this State, that corporation is required to file an Illinois income tax return regardless of whether the corporation is liable for any Illinois income tax IITA, Section 502(a)(2). The Illinois Secretary of State determines whether a foreign corporation is authorized to do business in Illinois. You may wish to contact the Secretary of State at the following address:

The Honorable George Ryan
Secretary of State
Business Services Department
Howlett Building, Room 328
Springfield, IL 62756

Please feel free to contact the Department if you have other questions or require additional information.

Sincerely yours,

Jackson E. Donley
Associate Counsel